In the High Court of Judicature at Madras

Dated:29.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Habeas Corpus Petition No.727 of 2006

Kala .. Petitioner

vs.

1. The Inspector of Police
   J-9 Duraipakkam Police Station
   Chennai 600 096.

2. The Commissioner of Police
   Greater Chennai
   Chennai 600 008.

3. The Secretary to the Government
   Prohibition and Excise Department
   Chennai 600 009.

4. The Superintendent of Central Prison
   Central Prison, Chennai 600 003. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr. Dr. G. Krishnamoorthy
For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

In this petition, the petitioner by name Kala, challenges the detention order dated 03.07.2006 passed by the second respondent herein, detaining her son Magesh as "Goonda" under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of

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1982 , in short "the Act").

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3. At the foremost learned counsel for the petitioner after taking us through necessary averments in para 4 of the grounds of detention submitted that in the absence of any material and subjective satisfaction as to the imminent possibility of the detenu being coming out on bail, the detention order is not warranted and prayed for interference. We verified para 4 of the grounds of detention and verified that the detaining authority noted that the detenu was in remand in Crime No.672 of 2006 of J-9 Duraipakkam Police Station and he moved a bail petition before Principal District and Sessions Judge, Chengalpattu in Crl.M.P.No.7215 of 2006 and the same is pending. After saying so and observing that he is likely to come out on bail in that case since in similar cases bail was granted by the same Court or higher Court, and taking note of his involvement in the adverse cases and his role in the ground case, the detaining authority passed the order of detention detaining the detenu. Inasmuch as the bail application of the detenu was admittedly pending before the Sessions Court, Chengaalpattu, it cannot be disputed that order would be passed at any moment. Though learned counsel commented that the words "very likely" cannot be equated with and are not similar to the expression, "imminent possibility", in view of the Full Bench decision of this Court (Madurai Bench) in the case of K. Thirupathi vs. District Magistrate and District Collector, Trichirappalli District and another reported in 2005 (2) Law Weekly (Crl.)946, we find no substance in the said contention and we are satisfied that the conclusion arrived at by the detaining authority cannot be faulted with. Accordingly, we reject the said contention.

4. The learned counsel for the petitioner next submitted that the representation submitted by the detenu to the detaining authority even prior to the confirmation by the Government has not been considered. He also submitted that he has no grievance regarding the representation sent to the Advisory Board and Secretary to Government and his only grievance is that the detaining authority / Commissioner of Police, though received representation of the detenu, did not pass any order before confirmation order was passed by the Government. He further contended that in spite of the fact that the detention order was passed on 03.07.2006, the detaining authority waited till 05.07.2006 for communicating the detention order and the grounds were served on the detenu only on 08.07.2006. He commented the conduct of the detaining authority in sending the detention order and grounds of detention belatedly. The learned Additional Public Prosecutor has pointed out that the detention order passed on 03.07.2006 was served on the detenu on 05.07.2006 and all the documents, grounds, etc. were served on him on 08.07.2006. As per

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Section 8(1) of the Act, the grounds of detention and the connected records / materials have to be supplied to the detenu within a period of five days from the date of passing of the detention order. Inasmuch as the detention order was passed on 03.07.2006, serving of grounds of detention and documents on 08.07.2006 cannot be faulted with. On the other hand, the same is within the permissible period as prescribed.

5. Regarding the representation addressed to the detaining authority, learned Additional Public Prosecutor on instructions and by placing the records before us submitted that the representation was received by the detaining authority / Commissioner of Police only on 30.07.2006. He also pointed out that the detention order was approved by the Government on 14.07.2006. It is not in dispute that no order passed by the detaining authority shall remain in force more than 12 days after making thereof, unless, in the meantime, it has been approved by the State Government, as evident from Section 3 (3) of the Act. The provisions make it clear that the grounds of detention should be communicated within 5 days from the date of detention, so as to enable the detenu to make an effective and meaningful representation to the State Government before approval of the detention order by the State Government and if the grounds of detention are not served within 5 days from the date of detention, the order of detention is vitiated and the Court can set aside the detention order. In our case, the particulars furnished clearly show that the grounds of detention and all other connected materials were served within the prescribed period and the Government also approved the order of detaining authority within 12 days as provided under Section 3(3) of the Act. It is not in dispute that after approval by the Government on 14.07.2006, the detaining authority had no power to pass any order on the representation of the detenu. As already observed, the representation of the detenu was received by the detaining authority only on 30.07.2006, and hence the detaining authority cannot be blamed for not passing any order on the said representation. Accordingly, we reject the above submission of the learned counsel for the petitioner.

6. Finally, the learned counsel for the petitioner submitted that arrest memo issued in the case of the detenu is not in conformity with the directions of the Supreme Court in the case of D.K. Basu vs. State of West Bengal reported in 1997 S.C.C. (Cri.) 92. We verified the arrest memo available at pages 205 and 207 of the paper book supplied to the detenu. Though in the relevant column, the time of arrest alone is mentioned, the same form contains the date of arrest, viz., 08.06.2006. It is also not in dispute that the arrest was intimated to one Kala, petitioner herein, who is none else than the mother of the detenu. Accordingly, we reject the said contention also.

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7. Except the above said contentions, no other ground has been raised.

In the light of what is stated above, this habeas corpus petitions is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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   Chennai 600 096.

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   Greater Chennai
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3. The Secretary to the Government
   Prohibition and Excise Department
   Chennai 600 009.

4. The Superintendent of Central Prison
   Central Prison, Chennai 600 003.

5.The Public Prosecutor,
High Court, Madras.

6.The Joint Secretary to Government
Public (Law and Order), Fort St. George,
Chennai.

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